Filed 5/22/19 East West Bank v. FTR International, Inc. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SEVEN

EAST WEST BANK, Plaintiff, v. FTR INTERNATIONAL, INC., Defendant and Respondent; TRUSTEES OF THE SOUTHERN CALIFORNIA IBEW-NECA PENSION PLAN et al., Defendants and Appellants; ARCH INSURANCE COMPANY et al., Defendants and Respondents.	B290402 (Los Angeles County Super. Ct. No. BC631437)

APPEAL from an order of the Superior Court of Los Angeles County, David Sotelo, Judge. Reversed and remanded with directions.

Laquer Urban Clifford & Hodge and J. Paul Moorhead for Defendants and Appellants Trustees of the Southern California IBEW-NECA Pension Plan et al.

Girardi | Keese and Robert W. Finnerty for Defendant and Respondent FTR International, Inc.

Watt Tieder Hoffar & Fitzgerald and Christopher M. Bunge for Defendants and Respondents Arch Insurance Company and Liberty Mutual Insurance Company.

INTRODUCTION

FTR International, Inc. was a contractor that agreed to build a public building for the City of Signal Hill pursuant to a contract that, among other things, required the City to deposit a percentage of the money FTR had earned each month into an escrow account at a bank. After a dispute arose during construction about whether FTR defaulted under the contract, the bank deposited the money with the court and filed this interpleader action.

FTR had many creditors at the time, some of whom had obtained judgments in California federal courts against FTR. FTR's creditors included the trustees of several pension and benefit plans for construction workers (collectively, the Trusts), which had obtained judgment liens on FTR's accounts receivable and other personal property before the bank filed this action. Many of FTR's creditors, including the Trusts and several of FTR's insurers, filed notices of their judgment liens in this action, seeking to satisfy the various debts FTR owed them with the

money the City had deposited in the escrow account. One of those insurers, Arch Insurance Company, filed the first notice of a lien in this action.

Because the interpleaded funds were not nearly sufficient to pay all of FTR's creditors, the trial court had to resolve the priority of the competing liens on FTR's assets. In particular, the court ruled Arch was entitled to the interpleaded funds because it filed the first notice of lien in this action, even though the Trusts obtained their judgment lien on FTR's personal property before the bank had even filed this action. We conclude the Trusts' liens had priority because the funds in the escrow account were for FTR's accounts receivable. Therefore, we reverse.

FACTUAL AND PROCEDURAL BACKGROUND

A. *FTR Contracts with the City To Build a Police Station*

In September 2010 the City and FTR entered into an $8.6725 million contract to build a police station and emergency operations center. The parties also entered into an escrow agreement, with East West Bank as the escrow agent, pursuant to which the City deposited a percentage of each progress payment due FTR under the contract as a security deposit in lieu of retention. The escrow instructions, as required by Public Contract Code section 22300, which governs the deposit of retained earnings withheld by a public agency, stated FTR would pay the escrow administration fees and could withdraw the interest earned on the funds in the account. (See Pub. Contract Code, § 22300, subd. (f)(4), (f)(5).) The instructions provided FTR could withdraw the principal only with written consent by the City and gave the City the right to withdraw the principal within

seven days of notifying East West Bank in writing of a default by FTR. (See *id.*, § 22300, subd. (f)(6), (f)(7).) The escrow instructions also provided that, upon written notification from the City the project was complete, East West Bank would release to FTR all of the funds on deposit. (See *id.*, § 22300, subd. (f)(8).)

B. *The Trusts Obtain Two Federal Court Judgments Against FTR and File Judgment Liens on FTR's Personal Property*

On March 1, 2012 the Trusts obtained a judgment against FTR in federal court in the amount of $821,106.03, plus postjudgment interest. On March 9, 2012 the Trusts filed with the California Secretary of State a notice of judgment lien on FTR's personal property under Code of Civil Procedure section 697.530.[1] The Trusts timely renewed the personal property lien for another five years by filing on February 16, 2017 a notice of continuation of the lien.

On April 30, 2012 the Trusts obtained another federal court judgment against FTR in the amount of $133,957.06, plus postjudgment interest. On May 9, 2012 the Trusts filed with the California Secretary of State a notice of judgment lien on FTR's personal property under section 697.530 and timely renewed that lien by filing on April 28, 2017 a notice of continuation of the lien.

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[1] Undesignated statutory references are to the Code of Civil Procedure.

C. *After the City Claims FTR Defaulted on the Contract, East West Bank Files This Action and Deposits the Retained Funds with the Court*

Meanwhile, on March 13, 2012 the City, claiming that FTR had breached its obligations under the City's contract with FTR and that FTR had ceased work on several major public works projects, terminated the contract. The record does not reflect that much, if anything, happened over the next two years. But on September 3, 2014 the City demanded East West Bank release the assets in the escrow account to the City, as required by the escrow instructions. On September 23, 2014 FTR instructed East West Bank not to release any money to the City and to wait for a court order directing how to distribute the funds. The City responded on September 25, 2014 by instructing East West Bank to honor the City's demand for the money. After efforts to resolve the dispute apparently failed, the City on July 20, 2016 again asked East West Bank to release the escrow funds. FTR again objected, and on August 23, 2016 East West Bank filed this interpleader action and deposited with the court the $493,531.16 it was holding in escrow.

D. *FTR's Creditors File Liens in This Action*

Several creditors of FTR filed judgment liens in this action under sections 708.410-780.480 seeking to obtain money from the interpleaded funds to satisfy their judgments against FTR. First was Arch, which on June 8, 2017 filed a notice of lien in this action stating that the amount required to satisfy a federal court judgment Arch had obtained against FTR in March 2013 was $18,856,763. Next was Liberty Mutual Insurance Company, which on August 8, 2017 filed a notice of lien stating that the

amount required to satisfy a federal court judgment Liberty Mutual had obtained against FTR was $10,397,238.69. Next were the Trusts, which on August 28, 2017 filed their notices of lien (and on October 4, 2017 filed amended notices of lien),[2] claiming $149,968.71 and $17,445.91 were required to satisfy their 2012 federal court judgments against FTR. Several other judgment creditors of FTR filed liens in December 2017.

E. *The Trial Court Rules Arch's Lien Had Priority over the Trusts' Liens*

The City and FTR reached a settlement on August 9, 2017. The City agreed that all of the interpleaded funds, $493,531.16, would be released to FTR, which essentially meant FTR's attorneys and creditors.

The trial court held several hearings on the competing claims by FTR's creditors to the $493,531.16 in the escrow

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[2] The amended notices of lien stated that, "[f]or purposes of determining the priority of liens asserted in this matter, the [Trusts'] lien 'relates back to the dates(s)' that the . . . Trusts perfected" their judgment liens on FTR's personal property in 2012. The amended notice also stated the Trusts had served an affidavit on the City under the claim and deposit procedures in sections 708.720-708.750, which govern money owed by public entities to judgment debtors. Those procedures, however, do not apply where, as here, the obligation of the "public entity to pay money to the judgment debtor is the subject of a pending action . . . ." (§ 708.720, subd. (c).) In that situation, the judgment creditor files a lien in the pending action under section 708.410. (§ 708.720, subd. (a); see Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2018) ¶ 6:1513.)

account. The court ruled that FTR's attorneys were entitled to $197,412.46 of that amount for attorneys' fees incurred in representing FTR in its dispute with the City. The parties to this appeal do not challenge that ruling. As for the rest of the funds, the trial court ruled it would follow the first-in-line, first-in-right rule of Civil Code section 2897, which provides that "different liens upon the same property have priority according to the time of their creation," and the court awarded the balance of the interpleaded funds ($296,118.70) to Arch. None of FTR's other creditors received a distribution from the escrow account. The Trusts appealed.

DISCUSSION

A. *Public Agency Construction Contracts and Retention Escrow Accounts*

The dispute in this case is over retained funds deposited by the City, the owner of the property, into an escrow account for the benefit of FTR, the contractor, under Public Contract Code section 22300. That statute provides a mechanism for protecting a public agency's ability to secure a complete construction project when paying a contractor in installment payments. Several cases have explained how that system works in California.

"'[I]t is common for construction contracts to contain terms that protect an owner's construction funds. Owners and contractors generally structure their contracts to provide for installment payments to the contractor as the work progresses, typically as the work reaches specified stages of completion. [Citation.] "This payment system adds incentive for the contractor to complete the work and reduces the risk of nonperformance for the owner. A percentage of funds held until

completion of all of the work is called retainage and is intended both to reduce the risk of nonperformance by the contractor and to assure the completion of the work in accordance with the contract terms.'" [Citation.] If the contractor defaults on the construction contract 'then the owner is entitled to use the retained funds to complete the contract. In fact, this is one of the primary reasons for which the owner insists on retainage in the first place.'" (*Pittsburg Unified School Dist. v. S.J. Amoroso Construction Co., Inc.* (2014) 232 Cal.App.4th 808, 814 (*Pittsburg*); see *Cates Construction, Inc. v. Talbot Partners* (1999) 21 Cal.4th 28, 55 ["if an owner avoids overpaying the contractor as the project progresses, then the owner should have funds available to apply toward completion of the project in the event of the contractor's default"]; *Greg Opinski Construction, Inc. v. City of Oakdale* (2011) 199 Cal.App.4th 1107, 1120 ["[t]he purpose of the practice of withholding retention payments is to give the owner security in case of breach by the contractor"].)

"A retention fund typically consists of cash that is a percentage of each progress payment, which the owner retains to be paid at the completion of the project. By statute, retention withheld from payments made by a public entity must be released to the contractor within 60 days after completion of the project. [Citation.] A public entity may withhold from such payment up to 150 percent of any amount that is in dispute between it and the contractor. [Citation.] Failure to pay retention as required by section exposes the public entity owner to penalty interest on amounts improperly withheld and an award of attorney fees." (*Pittsburg*, *supra*, 232 Cal.App.4th at pp. 814-815; see Pub. Contract Code, § 7107, subd. (f).) Contractors may also "substitute securities of equivalent value in

lieu of cash retention amounts or, if retention is held in an escrow account, . . . direct that the escrow agent invest retention funds in such securities. [Citation.] This enables contractors to earn interest on retained funds, while in turn requiring contractors to offer the same option to subcontractors from whom the contractor withholds a retention." (*Pittsburg*, at p. 815; see Pub. Contract Code, § 7107.)

Thus, "retained earnings serve as an incentive for timely completion of the contract. They are effective for this purpose precisely because they are under the control of the owner who can use them if the contractor defaults on his obligations. [Citation.] Of course, the owner does so at its peril and can be subject to hefty penalties and attorney fees if it is shown that all or part of the retention should have been released to the contractor. [Citation.] The statutory scheme thus provides to the contractor a powerful remedy for wrongful withholding of the retention fund, but it does not allow the contractor to obstruct the public entity's control over it." (*Westamerica Bank v. City of Berkeley* (2011) 201 Cal.App.4th 598, 610-611.)

Here, as stated, the City deposited retained earnings into an escrow account at East West Bank. As of August 2014, there was $493,531.16 in the escrow account, and East West Bank deposited this amount with the court when the bank filed this interpleader action.

B. *Lien Priority*

As discussed, the Trusts in 2012 filed notices of judgment liens with the Secretary of State pursuant to section 697.530. These filings created liens on FTR's interests in its personal property, including FTR's accounts receivable. (§ 697.530,

subd. (a)(1).) The liens also attached to FTR's accounts receivable and other personal property FTR acquired after the Trusts filed the notices of liens with the Secretary of State. (See § 697.530, subd. (b) ["If any interest in personal property on which a judgment lien could be created under subdivision (a) is acquired after the judgment lien was created, the judgment lien attaches to the interest at the time it is acquired."]; *In re Imagine Fulfillment Services, LLC* (Bankr. C.D. Cal. 2013) 489 B.R. 136, 144 [under California law, a "judgment lien attaches to business personal property interests owned by the judgment debtor when the judgment lien is filed, as well as to any lienable property later acquired by the judgment debtor"]; Ahart, Cal. Practice Guide: Enforcing Judgments and Debts (The Rutter Group 2018) ¶ 6:241 [same].) Under section 697.600, subdivision (a), the Trusts' judgment liens on FTR's personal property had "priority over any other judgment lien thereafter created on the property." (See 8 Witkin, Cal. Procedure (5th ed. 2008) Enforcement of Judgment § 82 ["The primary advantage of the [personal property judgment lien] procedure is that it gives a judgment creditor a fast and inexpensive method of obtaining priority over certain other creditors, and thus may enable the judgment creditor to avoid the delay, expense, and uncertainty involved in seeking a levy of execution"]; Woodward, New Judgment Liens on Personal Property: Does "Efficient" Mean "Better"? (1990) 27 Harv. J. on Legis. 1, 7, 10 ["The lien created by [California's procedure governing judgment liens on personal property] will secure the judgment creditor's priority in the personalty against many later claimants. Obtaining a judgment lien in [California and similar] states is possible without using the sheriff, without removing the property from the debtor's control, and without much of the risk

and cost one must sustain in other states to get a similar priority advantage."].)

For judgment liens in a judgment debtor's pending action under section 708.410, priority is generally according to the time of the creation of the liens. (Civ. Code, § 2897.) ""California follows the 'first in time, first in right' system of lien priorities. [Citation.]" . . . "*Other things being equal*, different liens upon the same property have priority according to the time of their creation . . . ."" (*Bank of New York Mellon v. Citibank, N.A.* (2017) 8 Cal.App.5th 935, 944; see *Waltrip v. Kimberlin* (2008) 164 Cal.App.4th 517, 525 ["[w]here there are competing liens, the general rule is that, all things being equal, liens have priority according to the time of their creation"].) But things are not always equal. (See *Bank of New York Mellon*, at p. 944 ["'[i]t appears the Legislature used the words "other things being equal" to refer to the equities involved in a competing liens situation'"]; *Nicoletti v. Lizzoli* (1981) 124 Cal.App.3d 361, 369 [lien "[p]riority based upon time of creation may . . . be subordinated to the equitable preference accorded to the party who is first to assert his claim"].)

C. *The Interpleaded Funds from the Escrow Account Were Payments on FTR's Accounts Receivable from the City*

The Trusts argue the retained earnings deposited by the City into the escrow account were payments on FTR's accounts receivable subject to the Trusts' 2012 judgment liens on FTR's personal property. The Trusts contend the funds in the escrow account were for accounts receivable because they consisted of progress payments paid by a property owner "for work performed

by the contractor during the construction of the project" and because retained earnings "are amounts earned by the contractor based on services rendered on the construction project." Arch contends that whether the funds were for FTR's accounts receivable, and therefore subject to the Trusts' judgment lien on FTR's personal property under section 697.510, "is irrelevant to this dispute." Arch argues "the Trusts were not seeking to lien an account receivable" under section 708.410 but instead "to lien FTR's cause of action[] only."[3] Arch also argues the retention earnings were not payments on accounts receivable because under the escrow instructions the City, not FTR, had control over the escrow account and, therefore, "FTR's right to payment, at all times, was conditioned upon the City's consent."[4]

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[3] The notice of lien the Trusts filed in this action under section 708.410 stated it was "based on judgments previously entered against FTR," namely, the liens created in March 2012 pursuant to section 697.510.

[4] We review an order regarding lien priority de novo. (*Wells Fargo Bank v. Neilsen* (2009) 178 Cal.App.4th 602, 608-609.) We also review the trial court's interpretation of the statutes governing lien priority de novo. (*California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 381.) The abuse of discretion standard of review, which Arch argues applies, applies to an order approving the amount of a judgment debtor's settlement of claims, which is not an issue in this appeal. (See *Casa Eva I Homeowners Assn. v. Ani Construction & Tile, Inc.* (2005) 134 Cal.App.4th 771, 778 ["'a trial court's approval of a settlement subject to certain conditions related to a judgment lien is reviewed under an abuse of discretion standard'"]; *Oldham v. California Capital Fund, Inc.* (2003) 109 Cal.App.4th 421, 430 ["abuse of discretion

Section 680.130 incorporates the definition of "account receivable" in Commercial Code section 9102, subdivision (a)(2). The latter statute provides that an "account" is "a right to payment of a monetary obligation, whether or not earned by performance," including "for services rendered or to be rendered." (Com. Code, § 9102, subd. (a)(2)((ii).) An account receivable is a right to payment for "work performed and billed, but in which the bill has not been paid." (*Howard v. Babcock* (1993) 6 Cal.4th 409, 413; see *Pacific Decision Sciences Corp. v. Superior Court* (2004) 121 Cal.App.4th 1100, 1107 ["[a]n account receivable is 'a right to payment of a monetary obligation' that is not evidenced by chattel paper or an instrument"].)

So let's take it one step at a time. If the City and FTR had agreed the City could keep as retained earnings a percentage of payments due under the contract until completion of the project, instead of depositing the retainage into an escrow account, there is little doubt FTR would have a right to payment from the retainage for services rendered to the City because FTR earned the money by working on the project and completing various stages. The section of the contract between the City and FTR titled "Partial Progress Payments and Retention," which references Public Contract Code section 22300, provided that FTR was to submit a monthly estimate "of the value of the total amount of work done and materials furnished by [FTR] and incorporated into the work completed up to and including" that month. The contract further provided that the City "shall retain ten percent (10%)" of the approved "estimated value of the work

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standard generally applies to a decision concerning the approval of a settlement under section 708.440"].)

as part security for the fulfillment of the Contract by [FTR]."[5] In court filings in this action, both FTR and the City described the retainage as money FTR had "earned" and was "owed" under the contract. It was, after all, retained earnings. (See *Westamerica Bank v. City of Berkeley*, *supra*, 201 Cal.App.4th at p. 601 ["[c]onstruction contracts routinely include provisions that allow the owner to withhold a portion of the progress payments earned by the contractor as a means to ensure satisfactory completion of work"]; *Western Landscape Construction v. Bank of America* (1997) 58 Cal.App.4th 57, 59 ["[t]he retention amount constituted money earned by [the contractor] for work done during the immediately preceding progress payment period, but which was withheld pursuant to contract until final completion and inspection"]; see also *Petron Trading Co., Inc. v. Hydrocarbon Trading and Transport Co., Inc.* (E.D. Pa. 1986) 663 F.Supp. 1153, 1158 [contractor's "right to payment from the [s]tate for fuel oil delivered under its contract with the state is an 'account'"]; *Earl Dubey & Sons, Inc. v. Macomb Contracting Corp.* (Mich. Ct. App. 1980) 97 Mich.App. 553, 564-565 ["money held by the state, reserved for progress payments to [the contractor], clearly falls within the UCC's definition of an account"].) Upon completion of the project without a default, FTR would have the right to payment of the retained funds because FTR earned those funds; the City was just retaining them in case of default.

To be sure, FTR's right to payment of the retainage might be offset or reduced by claims the City had against FTR for FTR's

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[5] We augment the record to include the three-volume exhibit containing the contract between the City and FTR that is attached to the City's cross-complaint against FTR.

delay in completing the project or default under the contract. But that would not change the fact FTR had a right to payment of the retained earnings, and therefore an account receivable. Indeed, accounts receivable are always subject to defenses and offsets asserted by the obligor (see *Koffman v. Modern-Imperial Co.* (1966) 239 Cal.App.2d 135, 136 [an "assignee of the accounts receivable, [is] normally . . . subject to any defenses, including setoff, which [the obligor has] against . . . the [a]ssignor"]), which is partly why the accounts receivable of a business are often sold or assigned at a discount. (See, e.g., *Rappaport v. Gelfand* (2011) 197 Cal.App.4th 1213, 1219 [expert valued accounts receivable of a law firm "at 25 percent of face value for accounts under 90 days, and of no value thereafter"]; *Moore v. Hill* (2010) 188 Cal.App.4th 1267, 1271 [describing "the business of factoring receivables" as "purchasing accounts receivable from . . . customers at a discount, collecting the receivables, and making a profit on the difference between the discounted rate paid and the receivables collected"]; Blanchard & Morris, Problem Loan Workouts (2d ed. 2018-2019) § 13:21 [a "debtor's accounts receivables may be of less value, for example, if there is little likelihood of collecting from the obligors, if the obligors dispute the validity of the debtor's claims, or if the obligors have other defenses to the debtor's claims"].)

The parties' use of an escrow account at a bank, rather than the City's account at a bank, to hold the retainage did not change anything. The money in the escrow account was still money that FTR had earned and that the City was withholding to ensure completion of the project and reduce the risk of nonperformance by FTR; it was just being held in a different bank account governed by different terms. The escrow account may have given FTR some added measure of protection, based on

the provisions of the joint escrow agreement, that the money FTR had earned would be available upon successful completion of the project. But the City still controlled whether and when the funds would be released to FTR, as the City would have controlled had the City kept the money in its bank account. All FTR had was a right to the interest on the assets in the account and a right to the principal if and when the City gave written consent or written notification of completion.

Thus, although Arch is correct that under the escrow instructions the City had control of the escrow account and FTR could not obtain the retained earnings without the City's consent, that did not mean FTR did not have a right to payment of the money in that account. And when the City declared a default and demanded (and became entitled to) the money in the escrow account, FTR did not lose its right to payment; FTR lost only its ability to satisfy its right to payment from the money in the escrow account. FTR still had the ability to enforce its right to payment by the more traditional, although perhaps more time-consuming and expensive, means of litigation, with the ability under Public Contract Code section 7107, subdivision (f), to seek "a charge of 2 percent per month on [any] improperly withheld amount" and prevailing party attorneys' fees for wrongfully withheld funds. As the court explained in *Pittsburg*, *supra*, 232 Cal.App.4th at page 823: "A demand for a distribution from a retention escrow account is not a final resolution of whether a contractor defaulted on the contract, such as by failing to perform or by performing defective work; nor does it permanently resolve whether and what amount the owner owes and must pay the contractor. The owner does not 'decide' a dispute in the sense of resolving it with finality, permanently taking funds or securities

claimed by the contractor. The owner may withdraw retention funds or securities and use them to repair or complete the project, but this does not preclude the contractor from challenging that decision thereafter. If litigation (or arbitration) under the construction contract is ultimately resolved in favor of the contractor, the court (or arbitrator) will require the owner to pay the amount owed, including returning any improperly withheld retention. Indeed, if the owner's withholding of retention is ultimately found unjustified, it will also be liable for penalty interest and attorney fees."[6] (See *Westamerica Bank v. City of Berkeley*, *supra*, 201 Cal.App.4th at pp. 610-611 [retained earnings "are under the control of the owner who can use them if the contractor defaults on his obligations," but "the owner does so at its peril and can be subject to hefty penalties and attorney fees if it is shown that all or part of the retention should have been released to the contractor"].)

Did East West Bank's decision to deposit the money with the court in connection with filing this action, rather than complying with the escrow instructions and returning the money to the City upon the City's demand, change the nature of the

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[6] The court in *Pittsburg* went on to state, in rejecting the contractor's argument that distributing the proceeds of the escrow account holding the retainage violated the contractor's due process rights, that "completion is a condition to earning payment of retention funds" and that the contractor "had no right to the retention funds (or the securities provided in lieu of funds) until the project was completed." (*Pittsburg*, *supra*, 232 Cal.App.4th at p. 824.) We interpret these dicta to mean that successful completion of the project is a condition of receiving from the escrow funds (as opposed to other sources) payment of money the contractor has earned.

retainage or eliminate FTR's account receivable for the retained earnings? We think not. As a preliminary matter, although the City did not demur, East West Bank did not state a cause of action for interpleader. Under the escrow instructions and Public Contract Code section 22300, subdivision (f)(8), East West Bank had a mandatory duty ("shall release") to deliver the money in the escrow account to the City within seven days of notice by the City that FTR had defaulted, and the bank was held harmless by the City and FTR from liability for releasing the funds to the City. In these circumstances, a bank cannot deposit the money with the court, and an interpleader action will be subject to demurrer. (*Westamerica Bank v. City of Berkeley*, *supra*, 201 Cal.App.4th at pp. 609-612.) Thus, because East West Bank did not state a cause of action for interpleader, the money in the escrow account should never have been deposited with the court. In any event, when the money moved from the escrow account to the court, it was still retained money FTR had earned. The City might not have to pay it to FTR if the City prevailed on its claim that FTR had defaulted and the City was entitled to the money as damages. Or the City might have to pay the money in the escrow account to FTR, plus interest for wrongfully withholding it, if the City did not prevail on its claim. But that goes to the value, not the nature, of the accounts receivable.

Finally, the settlement between the City and FTR did not eliminate the Trusts' right to the proceeds. The terms of the settlement were relatively straightforward: FTR got all the escrow funds East West Bank had deposited with the court, down to the last penny ($493,531.16). At that point, FTR received payment on its accounts receivable with the City. Because under section 697.530, subdivision (c), "a judgment lien on personal

property continues on the proceeds received upon the sale, collection, or other disposition of the property subject to the judgment lien," the Trusts' liens attached to that payment, and the trial court should have ordered the bank to pay it to the Trusts. (See § 697.610 [subject to exceptions not applicable here, "a judgment lien on personal property continues notwithstanding the sale, exchange, or other disposition of the property"]; Ahart, Cal. Practice Guide: Enforcing Judgments and Debts, *supra*, at ¶ 6:238 [a judgment lien on personal property "continues as a lien on identifiable cash proceeds received by the judgment debtor upon sale or other disposition of property subject to the lien," italics omitted]; see also § 697.620, subd. (a)(2) ["'[p]roceeds' means identifiable cash proceeds received upon the sale, exchange, collection, or other disposition of property subject to a judgment lien on personal property"].)

D. *The Trusts' Personal Property Judgment Liens Had Priority over Arch's Judgment Lien in This Action*

The Trusts created their judgment liens on FTR's accounts receivable and other personal property in 2012 (and renewed those liens in 2017). Arch did not even obtain its judgment against FTR until 2013, and although Arch obtained an abstract of judgment in June 2013, there is no evidence in the record of when, if ever, Arch obtained a lien against FTR's assets or property based on that judgment. From this chronology, the Trusts argue their liens on FTR's accounts receivable had priority over Arch's liens on the same personal property because, under section 697.020, subdivision (b), the Trusts' "liens on all amounts awarded to FTR relate back to the date the [judgment liens on FTR's personal property] were created." On the other hand, Arch

filed its notice of lien in this action in June 2017, two months before the Trusts filed their notices of liens in this action (August 2017). From this chronology, Arch argues that the "analysis of the validity and priority" of liens filed by Arch and the Trusts "starts and stops with [section] 708.410 et seq." and that the lien Arch filed in this action has priority because Arch filed it first. Each judgment creditor has an argument to priority.

The Trusts' liens, however, have priority because the priority of the Trusts' lien in this action related back to the date the Trusts created their judgment liens on FTR's personal property in 2012. Section 697.020, subdivision (b), provides: "If a lien is created on property pursuant to this division," which includes a judgment lien on personal property under section 697.530, "and a later lien of the same or a different type is created pursuant to this division on the same property under the same judgment while the earlier lien is in effect, the priority of the later lien relates back to the date the earlier lien was created."[7] The Trusts' 2012 (and renewed) judgment liens on FTR's personal property created liens on FTR's accounts receivable from the City. The notice of lien the Trusts filed in this action sought to lien the "same property," i.e., FTR's accounts receivable. Under section 697.020, subdivision (b), the Trusts' lien in this action was a "later lien" whose priority related back to the "earlier lien" the Trusts created in 2012. (See Legis. Com. com., Assem., West's Ann. Code Civ. Proc. (1982) foll. § 697.020

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[7] Under section 697.020, subdivision (a), the Trusts' judgment liens on FTR's personal property also had priority over any subsequent judgment liens on FTR's accounts receivable and other personal property. There is no evidence Arch obtained a judgment lien on FTR's personal property.

["[s]ection 697.020 states the general rule regarding the relation back of liens to preserve the judgment creditor's priority as of the time of the creation of the first in a series of overlapping liens on the same property"].)[8]

Arch argues the relation back doctrine of section 697.020, subdivision (b), does not apply because the Trusts' "earlier liens attached only to personal property and not to FTR's cause of action in this case." Arch argues that the Trusts are asking "the courts to treat their lien against FTR's cause of action as a personal property lien" and that section 697.530 does not include a cause of action as "an item of personal property." But the fact that FTR engaged in litigation to collect on its accounts receivable from the City did not eliminate the accounts receivable or the Trusts' prior liens. As stated, section 697.530, subdivision (c), provides that "a judgment lien on personal property continues on the proceeds received upon the . . . collection, or other disposition" of the accounts receivable. As the Trusts point out, if section 697.530, subdivision (c), did not encompass "[l]itigation and a subsequent settlement that determines the validity of a receivable," "[w]henever a debtor filed a lawsuit to collect an account receivable, all previously recorded [judgment liens on personal property] would be discontinued, and the priority of all those liens would be eliminated." Indeed, because judgment liens on personal property are not self-executing, judgment creditors

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[8] Former section 697.510, subdivision (c), provided that the relation back doctrine of section 697.020, subdivision (b), did not apply to judgment liens on personal property. In 2009 the Legislature amended section 697.510 to delete this provision. (See 8 Witkin Cal. Procedure, *supra*, Enforcement of Judgment § 68(3).)

must employ other means to enforce a judgment lien on personal property, such as obtaining a writ of execution and levying on specific property or filing a lien in a pending action. (See Ahart, Cal. Practice Guide: Enforcing Judgments and Debts, *supra*, at ¶ 6:230 [California law "does not provide any means of foreclosing on [a personal property judgment] lien; other enforcement procedures must be used to forcibly apply the judgment debtor's money or property to reduce a money judgment," italics omitted]; Laycock, Modern American Remedies (3d ed. 2002) 859 [although a judgment lien on personal property under Section 697.510 "enables judgment creditors to establish their priority without much of the waste and gamesmanship of execution," it "will still be necessary eventually to seize and sell the property subject to the lien"]; Chora, Judgment Way: Examinations, Liens, Turnover Orders, Levies, and Investigative Techniques Are Among the Tools Available to Compel Judgment Debtors to Meet Their Obligations, L.A. Law. (Feb. 2016) at pp. 23, 26 ["liens on real and personal property of the debtor" are "some of the easiest and most cost-effective forms of passive enforcement"].)

Arch's reliance on *Waltrip v. Kimberlin*, *supra*, 164 Cal.App.4th 517 is misplaced. The court in that case held that, because commercial tort claims are not listed in section 697.530, subdivision (a), as one of the "categories of personal property on which the lien attaches," the judgment creditor's lien on personal property under section 697.510 "did not cover commercial tort claims" or the proceeds from the settlement of those claims. (*Waltrip*, at pp. 521, 530.) But FTR's claim to the money the City retained was based on the fact FTR had earned that money by performing work on the project; FTR was not asserting any tort claims, commercial or otherwise, against the City. FTR did file a

cross-complaint, but FTR did not allege a cause of action for a commercial (or any) tort. FTR alleged only one cause of action, for violation of Public Contract Code section 7107, seeking payment of the $493,531.16 in the escrow account, which FTR claimed it had earned and the City had wrongfully withheld under the contract, and a two percent per month "charge," which under Public Contract Code section 7107, subdivision (f), was "in lieu of any interest otherwise due."

DISPOSITION

The trial court's May 7, 2018 order awarding the interpleaded funds to Arch is reversed. The matter is remanded with directions to enter a new order awarding $197,412.40 to the attorneys for FTR and the balance of the interpleaded funds to the Trusts, up to the amount required to satisfy the Trusts' two federal court judgments against FTR, and then to FTR's remaining creditors who filed a judgment lien in this action. The Trusts are to recover their costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J. ZELON, J.